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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN FRANCISCO DIVISION)

MICHELLE GARCIA, an individual;
GINA JOHNSON, an individual; and on
behalf of all others similarly situated,

Plaintiffs,

CASE NO. CV 08-0924-JCS
The Honorable Joseph C. Spero

JOINT MOTION TO TRANSFER

v.

KPMG, LLP, a limited liability partnership; KPMG, INC., a corporation; KPMG, a business entity form unknown; and DOES 1-100, inclusive

Defendants.

**VENUE TO CENTRAL DISTRICT
OF CALIFORNIA**

Hearing Date: April 18, 2008
Hearing Time: 9:30 a.m.
Hearing Place: 15th Floor

PLEASE TAKE NOTICE, hereby given, that on April 18, 2008, at 9:30 a.m., Plaintiffs Michelle Garcia and Gina Johnson and Defendant KPMG LLP will, and hereby do, move this Court, pursuant to 28 U.S.C. 1404(a), to transfer this case to the United States District Court for the Central District of California. To the extent that the Court feels it has the information necessary to grant the instant motion, the parties agree that a formal hearing on this matter is not necessary.

This motion is made on the following grounds: Two putative class actions based on nearly identical allegations and seeking substantially similar relief are already pending against Defendant KPMG LLP in the Central District of California. Those two cases, both of which are in their preliminary stages, are pending before the Honorable Ronald S.W. Lew. Because of the substantial overlap between the parties and allegations in the actions, transferring the instant action to the Honorable Ronald S.W. Lew would be more convenient for the parties and would further the interests of justice by conserving judicial resources, eliminating duplicative discovery, and avoiding the risk of inconsistent rulings.

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1 This motion is based upon this Notice of Motion and Motion; the Memorandum of
2 Points and Authorities in support thereof; all exhibits filed concurrently herewith; all
3 of the pleadings, papers, files and records in this matter; such oral and documentary
4 evidence as shall be received by the Court at or prior to the hearing of this Motion; and
5 such other and further matters that the Court may consider.

6
7 DATED: March 4, 2008

GIBSON, DUNN & CRUTCHER LLP

8
9 By: /s/ Sascha M. Gleckler
 Sascha M. Gleckler

10 Attorneys for KPMG LLP

11
12 DATED: March 4, 2008

MILSTEIN, ADELMAN & KREGER

13
14 By: /s/ William Baird
 William A. Baird

15 Attorneys for Plaintiffs Michelle Garcia and
16 Gina Johnson
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MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiffs brought this action in the Superior Court of California, Alameda County, without knowledge of the fact that there were already two putative class actions pending against Defendant KPMG LLP in the Central District of California based on nearly identical allegations and seeking substantially similar relief. Those other two actions were filed separately, but have since been transferred to a single judge, the Honorable Ronald S.W. Lew. The parties respectfully request that this case too be transferred to the Central District of California, for assignment to the Honorable Ronald S.W. Lew pursuant to 28 U.S.C. 1404(a). Doing so would further the interests of justice by conserving judicial resources, eliminating duplicative discovery, and avoiding the risk of inconsistent rulings. To the extent that the Court feels it has the information necessary to grant the instant motion, the parties agree that a formal hearing on this matter is not necessary.

II.

RELEVANT FACTUAL BACKGROUND

A. The Central District Actions

Two related cases are currently pending against KPMG in the Central District of California. The first is *Yeung v. KPMG LLP, et al.*, (“*Yeung*”), United States District Court, Central District of California, Case No. CV07-04396. It was properly removed to federal court on July 6, 2007, and is currently pending before the Honorable Ronald S.W. Lew.

The *Yeung* complaint alleges, among other things, that certain accounting professionals and other “similarly situated” individuals at KPMG should not have been paid on a salaried basis; rather, the plaintiff alleges that these professionals should have been classified as “hourly” workers and paid overtime compensation for working more than eight (8) hours per day or forty (40) hours per week. *See Yeung Complaint*

at ¶ 7 (attached hereto as Exhibit A). The putative class in *Yeung* is defined to include current and former “Associates” and “Senior Associates” of KPMG. *Id.* at ¶ 25.

On October 16, 2007, a second and related case was filed against KPMG LLP in the Central District of California: *Mansour Bighamian v. KPMG LLP, et al.*, (“*Yeung*”), United States District Court, Central District of California, Case No. CV-07-06699. Like the plaintiff in *Yeung*, plaintiff Bighamian filed a putative class action seeking to recover allegedly unpaid overtime wages for accountants and other professionals at KPMG. *See Bighamian* Complaint at ¶ 3 (attached hereto as Exhibit B). The putative class in *Bighamian* is also defined to include current and former “Associates” of KPMG. *Id.* at ¶ 4.

Pursuant to the parties’ request, the *Bighamian* matter was deemed related to the *Yeung* matter and was transferred to the Honorable Ronald S. W. Lew. *See* Order Re Transfer Pursuant to General Order 07-02 (Related Cases) (attached hereto as Exhibit C).

B. The Garcia/Johnson Action

The instant action, like *Yeung* and *Bighamian*, seeks allegedly unpaid overtime wages for individuals who Plaintiffs describe as “salaried exempt employees” of KPMG who performed accounting work.¹ *See Garcia* Complaint at ¶ 2, 20 (attached hereto as Exhibit D). Although the putative class is not defined precisely the same as

¹ All three cases include nearly identical causes of action. The *Yeung* Complaint alleges: (1) Failure to pay overtime; (2) Pay stub violations; (3) Waiting time penalties; (4) Section 17200 unfair business practices; and (5) Accounting. *Bighamian* alleges: (1) Failure to pay overtime (2) Failure to Provide Meal Breaks; (3) Failure to Provide Rest Breaks; (4) Waiting time penalties ; (5) Pay stub violations; and (6) Section 17200 unfair business practices. The *Johnson/Garcia* First Amended Complaint alleges: (1) Failure to pay overtime; (2) Failure to Provide Meal Breaks; (3) Pay stub violations; (4) Waiting time penalties; and (5) Section 17200 unfair business practices.

1 in the other two actions, the putative class members in these actions are substantially
2 similar.

3 III.

4 ARGUMENT

5 Section 1404(a) provides: “For the convenience of parties and witnesses, in the
6 interest of justice, a district court may transfer any civil action to any other district or
7 division where it might have been brought.”² In deciding whether a case should be
8 transferred, the District Courts in this Circuit consider the: (1) convenience of the
9 parties; (2) convenience of the witnesses; (3) interests of justice; and (4) plaintiff’s
10 choice of forum. *Lynch v. Alaska Tanker Co., LLC*, 2004 U.S. Dist. LEXIS 22930 (N.
11 D. Cal. 2004). With regard to the last factor, Plaintiffs agree that this case should be
12 transferred to the Central District of California.

13 The interests of justice is “the most important factor a court must consider.”
14 *Wiley v. Trendwest Resorts*, 2005 U.S. Dist. LEXIS 38893, 9-10 (N. D. Cal. 2005)
15 (internal citations omitted). “A major consideration under this factor is the desire to
16 avoid multiplicity of litigation from a single transaction.” *Id.* “In evaluating the
17 ‘interests of justice,’ the pendency of related actions in the proposed transferee forum
18 is a highly persuasive factor.” *Id.* (citing *A.J. Industries, Inc. v. United States Dist.*
19 *Court for Cent. Dist.*, 503 F.2d 384, 389 (9th Cir. 1974)). “The feasibility of
20 consolidation is also a significant factor in a transfer decision.” *Id.* Indeed, the
21 Supreme Court has recognized that, “[t]o permit a situation in which two cases
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23 ² The threshold consideration under 1404(a), that the action “might have been
24 brought” in the first instance in the transferee district, plainly is satisfied here.
25 Venue is proper in the Central District of California, in that KPMG LLP is
26 authorized to conduct, and does conduct, business throughout the State of
27 California, including Los Angeles, where it maintains an office employing
28 members of the putative class. The Central District of California also has subject
matter jurisdiction over this controversy, as does this Court, on the basis of the
Class Action Fairness Act, 28 U.S.C. § 1332.

1 involving precisely the same issues are simultaneously pending in different District
2 Courts leads to the wastefulness of time, energy, and money that § 1404(a) was
3 designed to prevent.” *Cont’l Grain Co. v. Barge FBL-585*, 364 U.S. 19, 26 (1960).

4 The *Bighamian* and *Yeung* actions are clearly related to this action. All three
5 actions call for the determination of the same or substantially related or similar
6 questions of law and fact on behalf of the same or similarly defined putative class, and
7 involve the same or similar claims for relief against the same defendant. As a result,
8 the convenience of the parties and the convenience of the witnesses would best be
9 served by transferring this action to the Central District of California for assignment to
10 the Honorable Ronald S.W. Lew. A transfer would also prevent the wastefulness of
11 time, energy, and money that § 1404(a) was designed to prevent.

12 Moreover, given the substantial overlap between the three cases, separate
13 proceedings before separate judges would result in costly duplicative discovery and the
14 substantial risk of inconsistent rulings on discovery and class certification issues,
15 among other things. Transfer of this action to the honorable Ronald S.W. Lew would
16 avoid such conflicts, conserve resources and promote an efficient determination of the
17 action.

18 It is for all of these reasons that the parties seek a transfer to the Central District
19 of California for assignment to Honorable Ronald S.W. Lew.

20 21 IV.

22 CONCLUSION

23 The parties agree that a transfer of this matter to the Central District of
24 California would best serve the convenience of the parties and witnesses, as well as the
25 interests of justice. And to the extent that the Court feels it has the information
26 necessary to grant the instant motion, the parties agree that a formal hearing on this
27 matter is not necessary. For all of these reasons, and pursuant to Section 1404(a), the
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1 parties respectfully request that this Court grant the instant motion for transfer to the
2 Central District of California for assignment to the Honorable Ronald S.W. Lew.

3 DATED: March 4, 2008 GIBSON, DUNN & CRUTCHER LLP
4

5 By: /s/ Sascha M. Gleckler
6 Sascha M. Gleckler

7 Attorneys for KPMG LLP

8 DATED: March 4, 2008 MILSTEIN, ADELMAN & KREGER
9

10 By: /s/ William Baird
11 William A. Baird

12 Attorneys for Plaintiffs Michelle Garcia and
13 Gina Johnson

14
15 I, Sascha M. Gleckler, hereby attest that I have on file all holograph signatures
16 for any signatures of William Baird indicated by a “conformed” signature (/s/) within
17 this efiled document.
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Exhibit A

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Attorneys for Plaintiff
JEFF YEUNG, on behalf of himself and others
similarly situated

90071
FILED
LOS ANGELES SUPERIOR COURT

MAY 15 2007

JOHN A. CLARKE, CLERK
BY R.M. SWAIN, DEPUTY

Case assigned to Judge
D234
Victoria Chaney

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

JEFF YEUNG, an individual, on behalf of
himself and others similarly situated,

Plaintiffs,

v.

KPMG LLP, a United States partnership;
and DOES 1 through 50 inclusive,

Defendants.

Case No. BC371206

CLASS ACTION COMPLAINT FOR:

1. Failure to Pay Overtime Wages
2. Violation of Labor Code § 226(a)
3. Waiting Time Penalties
4. Violation of Business & Professions Code §17200
5. Accounting

Plaintiff JEFF YEUNG ("Plaintiff") on behalf of himself and all others similarly
situated complains of defendants, and each of them, as follows:

I. INTRODUCTION

1. This is a Class Action, pursuant to Code of Civil Procedure §382, on
behalf of Plaintiff and other non-management salaried employees misclassified as exempt
employees, who are employed by, or formerly employed by KPMG LLP, and any
subsidiaries or affiliated companies (hereinafter collectively referred to as "defendants")
within the State of California.

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CLASS ACTION COMPLAINT

1 2. For at least four (4) years prior to the filing of this action continuing
2 to the present, defendants have had a consistent policy of failing to pay overtime to
3 salaried employees misclassified as exempt employees for all work over eight (8) hours
4 per day or forty (40) hours per week at the statutorily prescribed rates.

5 3. Plaintiff, on behalf of himself and all members of the class, brings
6 this action pursuant to California Labor Code §§ 201, 202, 203, 204, 226, 510, and 1194,
7 seeking unpaid wages and overtime, injunctive and other equitable relief, and reasonable
8 attorneys' fees and costs.

9 4. Plaintiff, on behalf of himself all members of the class, pursuant to
10 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
11 disgorgement of all benefits defendants enjoyed from their failure to pay overtime
12 compensation.

13 5. Venue as to each defendant is proper in this judicial district, pursuant
14 to Code of Civil Procedure § 395.5. Defendants employed Plaintiff and members of the
15 class in Los Angeles, California. The unlawful acts alleged herein have a direct effect on
16 Plaintiff and members of the class within the State of California.

17 II. PARTIES

18 A. Plaintiffs

19 6. Plaintiff JEFF YEUNG is a resident of Los Angeles County,
20 California.

21 7. Plaintiff (and members of the class), misclassified as exempt, was
22 regularly required to work over eight (8) hours per day or forty (40) hours per week for
23 defendants without being provided overtime compensation for such work, all in violation
24 of California labor laws, regulations and Industrial Welfare Commission Wage Orders.

25 8. Defendants willfully failed to compensate Plaintiff and former
26 employees who belong to the class for wages at the termination of their employment with
27 defendants.

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1 9. Defendants knowingly and intentionally failed to provide timely,
2 accurate, and itemized wage statements to Plaintiff and members of the class.

3 **B. Defendants**

4 10. Defendant KPMG LLP, the United States partnership that is part of
5 KPMG International, a Swiss non-operating association, maintains its headquarters in
6 New York City.

7 11. KPMG LLP is one of the largest public accounting firms in the
8 world, with nine office locations throughout California:

- 9 i. 6032 Katella Avenue
10 Cypress, CA 90630-5209
11 ii. 355 S. Grand Avenue
12 Los Angeles, CA 90071-1568
13 iii. One Kaiser Plaza
14 Oakland CA 94612-3612
15 iv. 600 Anton Boulevard
16 Costa Mesa, CA 92626-7651
17 v. 400 Capitol Mall
18 Sacramento, CA 95814
19 vi. 750 B Street
20 San Diego, CA 92101-8191
21 vii. 55 Second Street
22 San Francisco, CA 94105
23 viii. 500 East Middlefield Road
24 Mountain View, CA 94043
25 ix. 21700 Oxnard Street
26 Woodland Hills, CA 91367-3642

27 12. Defendants are KPMG LLP is recognized globally as a premier
28 provider of audit, tax, and advisory services.

1 13. Defendants are, and all times were, employers under California law
2 and applicable Industrial Welfare Commission Orders.

3 14. Defendants employed Plaintiff and similarly situated persons in
4 California and misclassified them as exempt employees when, pursuant to California
5 Labor Code § 515.5 and applicable Industrial Welfare Commission's Wage Orders, these
6 employees should be classified as non-exempt.

7 15. The true names and capacities, whether individual, corporate,
8 associate, or otherwise, of defendants sued herein as DOES 1 to 50, inclusive, are
9 currently unknown to Plaintiff, who therefore sues defendants by such fictitious names
10 under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based
11 thereon alleges, that each of the defendants designated herein as a DOE is legally
12 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek
13 leave of court to amend this Complaint to reflect the true names and capacities of the
14 defendants designated hereinafter as DOES when such identities become known.

15 16. Plaintiff is informed and believes, and based thereon alleges, that
16 each defendant acted in all respects pertinent to this action as the agent of the other
17 defendants, carried out a joint scheme, business plan or policy in all respects pertinent
18 hereto, and the acts of each defendant are legally attributable to the other defendants.
19 Furthermore, defendants in all respects acted as the employers and/or joint employers of
20 Plaintiff and members of the class.

21 III. FACTUAL BACKGROUND

22 17. Defendants hire non-managerial employees to perform audit, tax, and
23 advisory services.

24 18. Plaintiff and other members of the class are misclassified as exempt
25 employees when, according to California law, they do not meet the test for such a
26 qualification.

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1 19. Plaintiff and members of the class are, and at all times pertinent
2 hereto, have been non-exempt employees within the meaning of the California Labor
3 Code, and the implementing rules and regulations of the applicable Industrial Welfare
4 Commission Wage Orders.

5 20. Plaintiff and members of the class are salaried. They regularly work
6 over eight (8) hours per day or over forty (40) hours per week. Plaintiff and members of
7 the class are not paid any overtime compensation for such work.

8 21. Defendants are aware of the duties performed by the Plaintiff and
9 members of the class. Defendants also were aware that duties of Plaintiff and members of
10 the class were inconsistent with exempt status, and that such persons were and are not
11 exempt from the overtime provisions of the California overtime laws.

12 22. Defendants willfully failed to pay overtime wages when an employee
13 misclassified as exempt quits or was discharged.

14 23. Defendants have failed to comply with Industrial Welfare
15 Commission Wage Order 4-2001(7) by failing to maintain time records showing when the
16 employee begins and ends each work period, meal periods, and total daily hours worked
17 by itemizing in wage statements all deductions from payment of wages and accurately
18 reporting total hours worked by Plaintiff and members of the class.

19 24. Plaintiff and members of the class are covered by California
20 Industrial Welfare Commission Occupational Wage Order No. 4-2001.

21 IV. CLASS ACTION ALLEGATIONS

22 25. Plaintiff brings this action on behalf of himself and all others
23 similarly situated as a Class Action pursuant to §382 of the Code of Civil Procedure.
24 Plaintiff seeks to represent a class of all salaried non-management employees who are
25 currently employed or have been employed by defendants, including but not limited to
26 Associates and Senior Associates, and at any time four (4) years prior to the filing of this
27 lawsuit worked a shift over eight (8) hours per day or forty (40) hours per week and were
28 not paid any overtime compensation for such work.

1 26. The members of the class were all subject to the same unlawful
2 policy or plan of defendants as the Plaintiff, under which they were classified as exempt
3 from California overtime laws.

4 27. Plaintiff reserves the right under Rule 1855(b), California Rules of
5 Court, to amend or modify the class description with greater specificity or further division
6 into subclasses or limitation to particular issues.

7 28. This action has been brought and may properly be maintained as a
8 class action under the provisions of § 382 of the Code of Civil Procedure because there is
9 a well-defined community of interest in the litigation and the class is easily ascertainable.

10 **A. Numerosity**

11 29. The members of the class as defined are so numerous that joinder of
12 all members of the class is impracticable. While the precise number of class members has
13 not been determined at this time, Plaintiff is informed and believes that defendants
14 currently employ, and during the relevant time periods employed, over 500 salaried
15 employees misclassified as "exempt" by defendants.

16 30. Accounting for employee turnover during the relevant periods
17 necessarily increases this number substantially. Plaintiff alleges defendants' employment
18 records would provide information as to the number and location of all members of the
19 class.

20 **B. Commonality**

21 31. There are questions of law and fact common to the class that
22 predominate over any questions affecting only individual class members. These common
23 questions of law and fact include, without limitation:

24 (1) Whether defendants failed to pay for all hours worked;

25 (2) Whether defendants failed to pay overtime compensation as required
26 by the California Labor Code and applicable Industrial Wage Commission
27 Orders;

28 (3) Whether defendants violated § 226(a) of the California Labor Code;

(4) Whether defendants violated §§ 201-203 of the California Labor Code by failing to pay compensation due and owing at the time that any class member's employment with defendants terminated;

(5) Whether, by the misconduct alleged herein, defendants have engaged in unfair and/or unlawful business practices; and

(6) Whether Plaintiff and members of the class are entitled to equitable relief pursuant to Business & Professions Code § 17200, et. seq.

C. Typicality

32. The claims of the named Plaintiff are typical of the claims of the members of the class. Plaintiff and all members of the class were subjected to and harmed by defendants' uniform policy of misclassifying employees as exempt from overtime compensation in order to avoid having to pay overtime as required by California law. Plaintiff and all members of the class sustained injuries and damages arising out of and caused by defendants' common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. Adequacy of Representation

33. Plaintiff will fairly and adequately represent and protect the interests of the members of the class. Counsel who represents Plaintiff and the class is experienced and competent in litigating employment class actions.

E. Superiority of Class Action

34. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Individual joinder of all members of the class is not practicable, and questions of law and fact common to the class predominate over any questions affecting only individual members of the class. All of the facts material to resolving the common legal question of whether exemption from the California overtime laws is appropriate are common to all members of the class.

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1 35. A class action is also superior to other available methods for the fair
2 and efficient adjudication for the following reasons: (1) it is economically impractical for
3 members of the class to prosecute individual actions; (2) the class is readily definable; (3)
4 prosecution as a class action will eliminate the possibility of repetitious litigation; and (4)
5 a class action will enable claims to be handled in an orderly and expeditious manner—a
6 class action will save time and expense and will ensure uniformity of decisions.

7 36. The prosecution of separate actions against defendants under
8 California law would create a risk of inconsistent or varying adjudications with respect to
9 individual members of the class which would establish incompatible standards of conduct
10 for the defendants.

11 37. Plaintiff is unaware of any difficulties that are likely to be
12 encountered in the management of this action that would preclude its maintenance as a
13 class action.

14 V. FIRST CAUSE OF ACTION

15 FAILURE TO PAY OVERTIME WAGES

16 (VIOLATION OF LABOR CODE §§ 204, 510, 1194 & 3294)

17 38. Plaintiff incorporates paragraphs 1 through 37 as though fully set
18 forth herein.

19 39. By their conduct, as set forth herein, defendants violated California
20 Labor Code § 510 (and the relevant orders of the Industrial Welfare Commission) by
21 failing to pay the Plaintiff and members of the class: (a) time and one-half their regular
22 hourly rates for hours worked in excess of eight hours in a workday or in excess of forty
23 hours in any workweek or for the first eight hours worked on the seventh day of work in
24 any one workweek; or (b) twice their regular rate of pay for hours worked in excess of
25 twelve hours in any one day or for hours worked in excess of eight hours on any seventh
26 day of work in a workweek.

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1 40. Defendants' failure to pay overtime compensation in a timely fashion
2 also constituted a violation of California Labor Code § 204 which requires that all wages
3 are paid in semimonthly payments. For at least four (4) years prior to the filing of this
4 action continuing to the present, in direct violation of that provision of the California
5 Labor Code, defendants have to date failed to pay any overtime compensation earned by
6 Plaintiff and members of the class. Each such failure to make a timely payment of
7 overtime compensation to Plaintiff and members of the class constitutes a separate
8 violation of California Labor Code § 204.

9 41. Defendants' violations of California Labor Code §§ 204 and 510 (and
10 the relevant orders of the Industrial Welfare Commission) were repeated, willful and
11 intentional.

12 42. Plaintiff and members of the class have been damaged by said
13 violations of California Labor Code §§ 204 and 510 (and the relevant orders of the
14 Industrial Welfare Commission).

15 43. Pursuant to California Labor Code §§ 204 and 510 (and the relevant
16 orders of the Industrial Welfare Commission), defendants are liable to Plaintiff and
17 members of the class for the full amount of all their unpaid overtime compensation with
18 interest plus their reasonable attorneys' fees and costs.

19 44. Because defendants' unlawful classification of the Plaintiff and
20 members of the class as exempt from the California overtime laws constituted despicable
21 conduct that was carried out with malice, oppression, or fraud, in willful and conscious
22 disregard for their rights, Plaintiff and members of the class are entitled to exemplary
23 damages to punish the defendants pursuant California Civil Code § 3294.

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1 **VI. SECOND CAUSE OF ACTION**2 **VIOLATION OF LABOR CODE§ 226(a)**3 45. Plaintiff incorporates paragraphs 1 through 44 as though fully set
4 forth herein.5 46. California Labor Code § 226(a)(2) requires an employer to,
6 semimonthly or at the time of each payment of wages, furnish each of his or her
7 employees, either as a detachable part of the check, draft, or voucher paying the
8 employee's wages, or separately when wages are paid by personal check or cash, an
9 accurate itemized statement in writing showing total hours worked by the employee.10 47. California Labor Code § 226(a)(9) requires an employer to,
11 semimonthly or at the time of each payment of wages, furnish each of his or her
12 employees, either as a detachable part of the check, draft, or voucher paying the
13 employee's wages, or separately when wages are paid by personal check or cash, an
14 accurate itemized statement in writing showing all applicable hourly rates in effect during
15 the pay period and the corresponding number of hours worked at each hourly rate by the
16 employee.17 48. Defendants failed to provide Plaintiff and members of the class with
18 accurate itemized statements in writing showing the showing total hours worked and the
19 corresponding number of hours worked at each hourly rate as required by the California
20 Labor Code.21 49. Pursuant to California Labor Code §§ 226(a) and 226(e), Plaintiff and
22 members of the class are entitled to recover the greater of all actual damages or fifty
23 dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars
24 (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty
25 of four thousand dollars (\$4,000), and are entitled to an award of costs and reasonable
26 attorney's fees.

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VII. THIRD CAUSE OF ACTION

WAITING TIME PENALTIES

50. Plaintiff incorporates paragraphs 1 through 49 as though fully set forth herein.

51. Plaintiff and many members of the class are no longer employed by defendants. They were either fired or quit defendants employ.

52. Defendants failed to pay employees their premium overtime wages, a sum certain, at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

53. Defendants' failure to pay wages, as alleged above was willful in that defendants and each of them knew wages to be due but failed to pay them, thus entitling Plaintiff and those members of the class who no longer work for defendants to penalties under California Labor Code §203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

VIII. FOURTH CAUSE OF ACTION

UNFAIR COMPETITION PURSUANT TO
BUSINESS & PROFESSIONS CODE §17200

54. Plaintiff incorporates paragraphs 1 through 53 as though fully set forth herein.

55. Plaintiff brings this cause of action on behalf of himself, on behalf of the members of the class, and in his capacity as a private attorney general.

56. The conduct of all defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the members of the class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

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1 57. Plaintiff is a "person" within the meaning of Business & Professions
2 Code §17204 and has suffered injury and, therefore, has standing to bring this cause of
3 action for injunctive relief, restitution, and other appropriate equitable relief.

4 58. Business & Profession Code § 17200, et seq. prohibits unlawful and
5 unfair business practices.

6 59. Wage and hour laws express fundamental public policies. Paying
7 overtime is a fundamental public policy of this State and of the United States. Labor
8 Code §90.5(a) articulates the public policies of this State to enforce vigorously minimum
9 labor standards, to ensure that employees are not required or permitted to work under
10 substandard and unlawful conditions, and to protect law-abiding employers and their
11 employees from competitors who lower their costs by failing to comply with minimum
12 labor standards.

13 60. Defendants have violated statutes and public policies. Through the
14 conduct alleged in this Complaint, defendants, and each of them, have acted contrary to
15 these public policies, have violated specific provisions of the California Labor Code, and
16 have engaged in other unlawful and unfair business practices in violation of Business &
17 Profession Code §17200, et seq., depriving Plaintiff, members of the class, and all
18 interested persons of rights, benefits, and privileges guaranteed to all employees under
19 law.

20 61. Defendants' conduct, as alleged hereinabove, constitutes unfair
21 competition in violation of §17200 et. seq. of the Business & Professions Code.

22 62. Defendants by engaging in the conduct herein alleged, by not paying
23 premium overtime rates and for misclassifying employees as exempt, either knew or in the
24 exercise of reasonable care should have known that the conduct was unlawful. Hence,
25 defendants have violated §17200 et. seq. of the Business & Professions Code.

26 63. As a proximate result of the above mentioned acts of defendants,
27 Plaintiff and members of the class have been damaged in a sum as may be proven.

28 ///

1 64. Unless restrained by this Court, defendants will continue to engage in
2 the unlawful conduct as alleged above. Pursuant to Business & Professions Code this
3 Court should make such orders or judgments, including the appointment of a receiver, as
4 may be necessary to prevent the use or employment, by defendants, their agents or
5 employees, of any unlawful or deceptive practice prohibited by the Business &
6 Professions Code, and/or, including but not limited to, disgorgement of profits which may
7 be necessary to restore Plaintiff and members of the class to the money defendants have
8 unlawfully failed to pay.

9 **IX. FIFTH CAUSE OF ACTION**

10 **ACCOUNTING**

11 65. Plaintiff incorporates paragraphs 1 through 64 as though fully set
12 forth herein.

13 66. Plaintiff and members of the class are owed wages which equal the
14 sum of overtime compensation not paid by defendants to them, statutory interest on such
15 compensation, and waiting time penalties to members of the class whose employment has
16 terminated.

17 67. Plaintiff does not know the precise amount of compensation due to
18 Plaintiff and each member of the class. Upon information and belief, Plaintiff alleges that
19 defendants possess records from which the amount of compensation due and owing to
20 Plaintiff and each member of the class can be determined.

21 68. The amount of statutory interest and penalties owed to Plaintiff and
22 each member of the class is based upon the compensation owed by defendants. This
23 amount can only be determined by an accounting of books and records in the possession
24 of defendants.

25 69. Because it is impossible for the Plaintiff to determine the exact
26 amount of money due to Plaintiff and members of the class without a detailed review of
27 defendants' books and records and/or discovery in this action, Plaintiff seeks, among other
28 things, an accounting of books and records in the possession of defendants and/or

1 appointment of a receiver to determine the compensation owed to Plaintiff and members
2 of the class.

3 **RELIEF REQUESTED**

4 WHEREFORE, Plaintiff prays for the following relief:

5 1. For wages and overtime in an amount according to proof, with interest
6 thereon from at least four (4) years prior to the filing of this action to the present as may
7 be proven for Plaintiff and members of the class;

8 2. For penalties pursuant to California Labor Code § 226(e) for Plaintiff and
9 members of the class as may be proven at trial;

10 3. For penalties pursuant to California Labor Code § 203 for Plaintiff and those
11 members of the class who quit or were fired equal to their daily wage times thirty (30)
12 days;

13 4. An award of pre-judgment and post-judgment interest;

14 5. An order enjoining defendants to immediately cease their wrongful conduct
15 as set forth above; enjoining defendants from continuing to misclassify employees as
16 exempt from California overtime regulations and failing to pay such employees overtime
17 wages;

18 6. For restitution for unfair competition pursuant to Business & Professions
19 Code § 17200, including disgorgement or profits, in an amount as may be proven;

20 7. An accounting of books and records in possession of defendants and/or the
21 appointment of a receiver to determine the compensation owed to Plaintiff and members
22 of the class;

23 8. An award providing for payment of costs of suit;

24 9. An award of attorneys' fees;

25 10. Punitive damages; and

26 11. Such other and further relief as this Court may deem proper and just.

27 ///

28 ///

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: May 14, 2007

ANTHONY J. ORSHANSKY
DAVID H. YEREMIAN
ORSHANSKY & YEREMIAN LLP

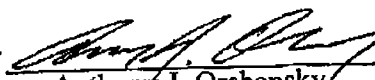
By 
Anthony J. Orshansky
Attorneys for Plaintiff and the
Plaintiff Class

Exhibit B

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 3 George Busu (Bar No. 235993)
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 20 Telephone: (610) 667-7706

21 Attorneys for Plaintiff, Mansour Bighamian

22 **UNITED STATES DISTRICT COURT**
 23 **CENTRAL DISTRICT OF CALIFORNIA-WESTERN DIVISION**

24 **CV07-06699 RGK**

FILED

25 MANSOUR BIGHAMIAN, on
 26 behalf of himself and all others
 27 similarly situated,

28 Plaintiff,

v.

KPMG LLP; and DOES 1 through
 10, inclusive,

Defendants.

) Case No.

) **CLASS ACTION COMPLAINT**

) (JURY TRIAL DEMANDED)

1
 CLASS ACTION COMPLAINT

1 Mansour Bighamian ("Plaintiff"), on behalf of himself and all others
 2 similarly situated, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This Court has original jurisdiction over all claims in this action under
 6 the Class Action Fairness Act, 28 U.S.C. § 1332(d). This is a putative class action
 7 whereby: (i) the proposed Rule 23 class consists of over 100 or more members; (ii)
 8 at least some of the members of the proposed class, including Plaintiff, have a
 9 different citizenship from Defendant; and (iii) the claims of the proposed Rule 23
 10 class exceed \$5,000,000.00 in the aggregate.

11 2. In addition, this Court is empowered to issue a declaratory judgment
 12 pursuant to 28 U.S.C. §§ 2201 and 2202.

14 PRELIMINARY STATEMENT

15 3. As explained herein, under applicable employment laws, "Associates"
 16 (defined below) are entitled to overtime compensation. In short, if Associates
 17 work over forty hours per week and/or eight hours per day, they are entitled to
 18 overtime pay.

19 4. Plaintiff brings this action as a state-wide class action, on behalf of all
 20 current and former Associates, defined as: accountants, auditors and/or consultants
 21 who provided audit, tax risk management and other client services (collectively
 22 "Client Services") on behalf of KPMG LLP, or any other parent, subsidiary,
 23 related, or successor companies (collectively, "KPMG" and/or the "Company")
 24 and are/were not licensed as Certified Public Accountants, to recover unpaid
 25 overtime compensation pursuant to the California Labor Code, Industrial Welfare
 26 Commission Wage Orders and the California Business & Professions Code
 27 (collectively the "CA Labor Laws").
 28

1 excess of 40 hours in any given workweek, and/or in excess of eight (8) hours in a
2 workday, (ii) failing to provide them with all of their required meal and rest breaks;
3 and (iii) failing to retain and provide accurate records of actual hours worked and
4 wages earned by Plaintiff and the Class.

5 9. As a result of Defendant's violation of the CA Labor Laws, Plaintiff
6 and the Class were illegally under-compensated for their work.

7
8 **FACTUAL ALLEGATIONS**

9 10. Due to the nature of the job responsibilities and requirements of
10 Defendant's Associates, Plaintiff and members of the Class were, and continue to
11 be, required to work more than 40 hours a week, and/or 8 hours a day, during the
12 course of their employment with Defendant.

13 11. Unless proven to be exempt from the protection of California's
14 overtime laws, all employees are entitled to premium overtime pay for work in
15 excess of 40 hours per week, and/or 8 hours a day.

16 12. The duties of Associates are set forth in uniform, company-wide
17 policies and procedures promulgated by Defendant.

18 13. Defendant's employment policy regarding Associates did not require
19 them to attain a certification in a field of science or learning prior to providing
20 Client Services.

21 14. Pursuant to Defendant's uniform employment policies, Associates
22 were paid on a salary basis, irrespective of the hours actually worked, and were
23 unlawfully classified as exempt from overtime compensation.

24 15. Although the CA Labor Laws provide for certain exemptions to the
25 mandates of paying overtime compensation, no exemption applies in the instant
26 matter.

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1 16. Associates do not fall under the executive exemption, because their
2 primary duty is not the management of Defendant's business operations. Nor do
3 Associates customarily or regularly direct the work of at least two (2) or more
4 employees, or have the authority to hire and fire employees.

5 17. Plaintiff and the members of the Class are not administratively exempt
6 because they do not exercise the degree of discretion and independent judgment
7 necessary to qualify for the administrative exemption.

8 18. Finally, Plaintiff and the members of the Class do not qualify for the
9 professional exemption under California law because Associates are not certified
10 by the State of California as Certified Public Accountants.

11 19. As such, Associates, including Plaintiff and members of the Class,
12 have been wrongfully classified by Defendant and are not exempt from the
13 California's requirement of premium overtime pay.

14 20. In violation of CA Labor Laws, Plaintiff and the members of the Class
15 have not been paid overtime compensation at a rate not less than one and one-half
16 times their regular rate of pay for work performed over the 40 hour work week
17 and/or over 8 hours in a day.

18 21. Plaintiff alleges on behalf of the members of the Class that
19 Defendant's failure to pay overtime was knowing and willful.

20 22. Evidence reflecting the precise number of overtime hours worked by
21 Plaintiff and every other member of the Class, as well as the applicable
22 compensation rates, is in the possession of Defendant. If these records are
23 unavailable, members of the Class may establish the hours they worked solely by
24 their testimony and the burden of overcoming such testimony shifts to the
25 employer. See *Anderson v. Mt. Clemens Pottery Co.*, 328 U.S. 680 (1946).

26 23. Each of the foregoing acts is in contravention of applicable
27 employment laws.
28

PARTIES

24. Mansour Bighamian ("Plaintiff") was an Associate employed by Defendant in the State of California during the statutory period covered by this Complaint, who Defendant failed to compensate for all hours worked, including premium compensation at one and one half times his regular rate for all hours above and beyond forty hours for a work week.

25. Defendant KPMG is an international accounting firm offering full-service audit, tax, consulting and financial advisory services with offices located throughout the world. At all relevant times during the statutory period covered by this Complaint, Defendant has transacted business within the State of California.

CLASS ACTION ALLEGATIONS

26. Plaintiff brings this action as a class action for claims under the CA Labor Laws pursuant to the Federal Rules of Civil Procedure 23 (the "Class"):

All persons within the State of California who: (i) are/were employed as Associates with the Company; (ii) are/were not paid premium overtime compensation at a rate not less than one and one-half times their regular rate for hours worked beyond the forty (40) hour work week, and/or eight (8) hours in a workday; and (iii) were not provided with all required meal and rest breaks (the "Class").

27. In addition to the common issues of fact described below, members of the Class have numerous common issues of fact, including whether Defendant: (i) failed to compensate adequately the members of the Class for overtime hours worked as required by California Wage Order 4-2001, 8 C.C.R. § 11040 and California Labor Code Section 510; (ii) failed to provide all required meal and rest breaks in violation of Labor Code Section 226.7; (iii) committed an act of unfair competition under Business & Professional Code Section 17200 et seq., by not

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1 paying the required overtime pay and providing for all meal and rest breaks as
2 required by applicable CA Labor Laws; (iv) failed to maintain and provide
3 members of the Class with accurate and detailed records of hours worked and
4 wages earned, pursuant to CA Labor Code § 226(a); and (v) damaged members of
5 the Class, and if so, the extent of the damages.

6 28. The members of the Class are so numerous that joinder of all
7 members is impracticable. The exact number of the members of the Class can be
8 determined by reviewing Defendant's records.

9 29. Plaintiff will fairly and adequately protect the interests of the Class
10 and have retained counsel that is experienced and competent in class action and
11 employment litigation. Plaintiff has no interests that are contrary to, or in conflict
12 with, members of the Class.

13 30. A class action suit, such as the instant one, is superior to other
14 available means for the fair and efficient adjudication of this lawsuit. The damages
15 suffered by individual members of the Class may be relatively small when
16 compared to the expense and burden of litigation, making it virtually impossible
17 for members of the Class to individually seek redress for the wrongs done to them.

18 31. A class action is, therefore, superior to other available methods for the
19 fair and efficient adjudication of the controversy. Absent these actions, the
20 members of the Class likely will not obtain redress of their injuries and Defendant
21 will retain the proceeds of their violations of the CA Labor Laws.

22 32. Furthermore, even if any member of the Class could afford individual
23 litigation against the Company, it would be unduly burdensome to the judicial
24 system. Concentrating this litigation in one forum will promote judicial economy
25 and parity among the claims of individual members of the Class and provide for
26 judicial consistency.

27

28

1 33. There is a well-defined community of interest in the questions of law
2 and fact affecting the Class as a whole. The questions of law and fact common to
3 the Class predominate over any questions affecting solely individual members of
4 the action. Among the common questions of law and fact are:

5 a. Whether the Defendant employed the members of the Class
6 within the meaning of the CA Labor Laws;

7 b. Whether Defendant failed to pay Plaintiff and the members of
8 the Class all premium overtime compensation due to them;

9 c. Whether Defendant failed to provide Plaintiff and the members
10 of the Class all mandatory meal and rest breaks;

11 d. Whether Defendant violated any other statutory provisions
12 regarding compensation due to Plaintiff and the members of the Class; and

13 e. Whether Plaintiff and the members of the Class have sustained
14 damages, and if so, what is the proper measure of damages.

15 34. Plaintiff knows of no difficulty that will be encountered in the
16 management of this litigation that would preclude its continued maintenance.

17
18 **COUNT ONE**

19 35. Plaintiff incorporates the allegations contained in the previous
20 paragraphs of this Complaint as if fully set forth herein.

21 36. Pursuant to Defendant's employment policies Plaintiff and the
22 members of the Class were not credited for all hours worked.

23 37. Plaintiff and the members of the Class worked hours in excess of forty
24 per week and/or eight hours per day for which they did not receive premium
25 compensation.

26 38. California Wage Order 4-2001, 8 C.C.R. Section 11040 and Labor
27 Code Section 510(a) state that an employee must be paid overtime, equal to one
28

1 and one-half times the employee's regular rate of pay, for all hours worked in
2 excess of forty per week, and/or eight per day, unless the employee falls under one
3 of the enumerated exemptions.

4 39. California Labor Code Section 510(a) further states that any work in
5 excess of twelve (12) in one day shall be compensated at a rate of no less than
6 twice the employee's regular rate of pay.

7 40. Pursuant to California Labor Code Section 1194, Plaintiff and
8 members of the Class are entitled to recover their overtime wages, plus interest,
9 attorney's fees, and costs, in amounts to be proven at trial.

10
11 **COUNT TWO**

12 41. Plaintiff incorporates the allegations contained in the previous
13 paragraphs of this Complaint as if fully set forth herein.

14 42. Labor Code Section 512(a) requires employers to provide employees
15 with a meal period of at least thirty (30) minutes per five (5) hours worked.

16 43. Defendant failed to provide Plaintiff and members of the Class with
17 all meal breaks required by Labor Code § 512(a). As a result, pursuant to Labor
18 Code section 226.7, Plaintiff and members of the Class are entitled to one
19 additional hour's pay for each day a meal break was not provided, in an amount to
20 be proved at trial.

21
22 **COUNT THREE**

23 44. Plaintiff incorporates the allegations contained in the previous
24 paragraphs of this Complaint as if fully set forth herein.

25 45. Industrial Welfare Commission Wage Order 4, section 12 requires
26 employers to provide employees with a paid rest period of at ten (10) minutes per
27 four (4) hours worked.

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1 46. Defendant failed to provide Plaintiff and members of the Class with
2 all rest breaks.

3 47. As a result, pursuant to Labor Code section 226.7, Plaintiff and
4 members of the Class are entitled to one additional hour's pay for each day a rest
5 break was not provided, in an amount to be proved at trial.

6
7 **COUNT FOUR**

8 48. Plaintiff incorporates the allegations contained in the previous
9 paragraphs of this Complaint as if fully set forth herein.

10 49. Defendant willfully and intentionally failed to pay Plaintiff and the
11 other members of the Class B all the wages they were due by the deadlines
12 imposed under Labor Code Sections 201 and 202 upon cessation of the class
13 members' employment with Defendant. Plaintiff and the other members of the
14 Class B did not secret or absent themselves from Defendant nor refuse to accept
15 the earned and unpaid wages from Defendant. Accordingly, Plaintiff and members
16 of the Class B are entitled to waiting time penalties of up to thirty (30) days' pay,
17 in an amount to be proven at trial.

18
19 **COUNT FIVE**

20 50. Plaintiff incorporates the allegations contained in the previous
21 paragraphs of this Complaint as if fully set forth herein.

22 51. Due to Defendant's employment policies whereby Plaintiff and the
23 members of the Class were not credited for all hours worked, Defendant failed to
24 provide Plaintiff and members of the Class with accurate and detailed records of
25 hours worked and wages earned required by Labor Code Section 226(a).

26 52. Therefore, Plaintiff, on behalf of the Class, requests all such relief that
27 this Court deems appropriate pursuant to the CA Labor Laws.

COUNT SIX

53. Plaintiff incorporates the allegations contained in the previous paragraphs of this Complaint as if fully set forth herein.

54. As alleged herein, Defendant has committed an act of unfair competition under Bus. & Prof. Code Section 17200 et seq. by, inter alia: (i) failing to pay premium compensation for all overtime hours worked; (ii) failing to provide all required meal and rest breaks to Plaintiff and the members of the Class; and (iii) failing to pay all wages to the members of Class B.

55. Pursuant to Bus. & Prof. Code Section 17203, Plaintiff requests Defendant make restitution of all unpaid wages due to the Class, in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for:

- A. A Declaration that Defendant has violated the applicable California employment laws;
- B. An Order designating this Action as a California state class action;
- C. An Order appointing Plaintiff and their counsel to represent the Class;
- D. Imposition of a Constructive Trust on any amount by which Defendant was unjustly enriched at the expense of the Class as the result of the actions described above;
- E. An Order enjoining Defendant from any further violations of the California Labor Laws;
- F. For compensatory and punitive damages and all other statutory remedies permitted;
- G. Prejudgment interest;

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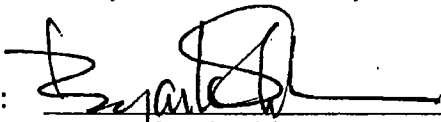
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H. An Order awarding attorneys' fees and costs; and

I. For all other relief as the Court deems just.

Dated: October 16, 2007

Christopher Kim
Bryan King Sheldon
George Busu
LIM, RUGER & KIM, LLP

By: 
Bryan King Sheldon

Joseph H. Meltzer
Gerald D. Wells, III
Robert J. Gray
Robert W. Biela
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280 King of Prussia Road
Radnor, PA 19087
Telephone: (610) 667-7706
Facsimile: (610) 667-7056
Counsel for Plaintiff

JURY DEMAND

Plaintiff hereby requests a jury trial on all issues so triable.

Dated: October 16, 2007

Christopher Kim
Bryan King Sheldon
George Busu
LIM, RUGER & KIM, LLP

By:



Bryan King Sheldon

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Counsel for Plaintiff

LIM, RUGER & KIM, LLP

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Exhibit C

Case 2:07-cv-06699-RSWL-CW Document 11 Filed 11/06/2007 Page 1 of 1

①

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

Mansour Bighamian

Plaintiff(s),

v.

KPMG LLP et al

Defendant(s).

CASE NUMBER:

CV 07-06699 RGK (FMOx)

**ORDER RE TRANSFER PURSUANT
TO GENERAL ORDER 07-02
(Related Cases)**

CONSENT

I hereby consent to the transfer of the above-entitled case to my calendar, pursuant to General Order 07-02.

Nov 5, 2007
Date

Ronald S. W. Lew
United States District Judge

DECLINATION

I hereby decline to transfer the above-entitled case to my calendar for the reasons set forth:

Date

United States District Judge

REASON FOR TRANSFER AS INDICATED BY COUNSELCase 07cv04396 RSWL (CWx) and the present case:

- ☒ A. Arise from the same or closely related transactions, happenings or events; or
☒ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☒ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

NOTICE TO COUNSEL FROM CLERKPursuant to the above transfer, any discovery matters that are or may be referred to a Magistrate Judge are hereby transferred from Magistrate Judge Olguin to Magistrate Judge Woehrle.

On all documents subsequently filed in this case, please substitute the initials RSWL (CWx) after the case number in place of the initials of the prior judge, so that the case number will read cv07-06699 RSWL (CWx). This is very important because documents are routed to the assigned judges by means of these initials. The case file, under seal documents, exhibits, docket, transcripts or depositions may be viewed at the ☒ Western ☐ Southern ☐ Eastern Division.

Subsequent documents must be filed at the ☒ Western ☐ Southern ☐ Eastern Division.
 Failure to file at the proper location will result in your documents being returned to you.

Exhibit D

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Attorneys for Plaintiffs,
Michelle Garcia & Gina Johnson

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

MICHELLE GARCIA, an individual; GINA
JOHNSON, an individual; and on behalf of all
others similarly situated,

Plaintiffs,

vs.

KPMG LLP, a limited liability partnership;
KPMG, INC., a corporation; KPMG, a business
entity form unknown; and DOES 1-100,
inclusive,

Defendants.

CASE NO.: RG07362698

**FIRST AMENDED CLASS ACTION
COMPLAINT:**

1. FAILURE TO PAY OVERTIME
COMPENSATION
2. FAILURE TO PROPERLY
COMPENSATE FOR MEAL BREAKS
3. FAILURE TO FURNISH PROPER
PAYCHECK STUBS
4. FAILURE TO PAY ALL WAGES AT
END OF EMPLOYMENT
5. VIOLATIONS OF BUSINESS AND
PROFESSIONS CODE § 17200

JURY TRIAL DEMANDED

CLASS ACTION COMPLAINT

Representative Plaintiffs MICHELLE GARCIA and GINA JOHNSON ("Plaintiffs"), on behalf of themselves, on behalf of the general Public, and on behalf of all others similarly situated, bring this case to challenge Defendants' lucrative, repressive and unlawful business practices and hereby demand a trial by jury and allege as follows:

1. This is a class action brought against DEFENDANT KPMG LLP, a limited liability partnership; DEFENDANT KPMG, INC., a corporation; DEFENDANT KPMG, a business entity form unknown; and DOES 1-100 (collectively referred to as "Defendants") on behalf of a collective class of all salaried persons employed by Defendants in California to do accounting work but who were not licensed or certified by the State of California in the practice of accounting and were not paid overtime for hours worked in excess of 8 in a day or 40 in a week (collectively referred to as "Uncertified Employees") from December of 2003 to the present.

2. This action alleges that Defendants: (1) failed to pay overtime for all hours worked by Uncertified Employees as required by the California Labor Code; (2) failed to properly compensate Uncertified Employees for missed meal breaks; (3) failed to furnish proper paycheck stubs when paying Uncertified Employees; (4) failed to pay all wages owed to Uncertified Employees at the end of their employment; and (5) violated California's Unfair Business Practices Act, California Business & Professions Code sections 17200, *et seq.*

JURISDICTION AND VENUE

3. This class action suit is founded upon California state law including, but not limited to, violations of the California Labor Code, the California Code of Regulations (Industrial Welfare Commission's Wage Orders) and the California Business & Professions Code, which are subject to the jurisdiction of this court.

4. Venue is proper in that Defendants are a limited liability partnership, a corporation, and business entity form unknown that are authorized to conduct and do conduct significant amounts of business in Alameda County as well as throughout the State of California. In particular, Defendants maintain an office in Oakland, California and have employed class members at this office.

PARTIES

5. Plaintiffs MICHELLE GARCIA and GINA JOHNSON are California residents who worked for Defendants during the class period.

6. Plaintiffs bring this action on behalf of themselves, on behalf of all others similarly situated and pursuant to California Business & Professions Code sections 17200, *et seq.*

7. At all times herein relevant, the Plaintiffs were and now are persons within the Class of persons further described and defined herein.

8. At all times herein, Defendant KPMG LLP, a limited liability partnership, Defendant KPMG, INC., a corporation; and Defendant KPMG, a business entity form unknown; were and are business entities that conduct significant amounts of business within the county of Alameda and were and are primarily involved in the business of selling public accounting services.

9. Plaintiffs are informed and believe and based thereon allege that the true names and capacities, whether individual, corporate, associate, or otherwise, of Does 1-100, inclusive ("Does"), are unknown to Plaintiffs, who therefore sue said Does by such fictitious names. Plaintiffs will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

10. Plaintiffs are informed and believe and based thereon allege that at all times herein mentioned Defendants were and are corporations, business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the California Labor Code; the applicable Wage Orders issued by the Industrial Welfare Commission; and California Business and Professions Code section 17200, *et seq.*

11. Plaintiffs are informed and believe and based thereon allege that each of the Doe Defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by Plaintiffs and the members of the Class.

12. Plaintiffs are informed and believe and based thereon allege that Does were the agents, servants and/or employees of the other Defendants and in doing the things hereinafter

1 alleged, and at all times, were acting within the scope of their authority as such agents, servants and
2 employees, and with the permission and consent of the other Defendants.

3 13. At all times herein mentioned, Defendants and each of them, were members of, and
4 engaged in, a joint venture, partnership and common enterprise, and acting within the course and
5 scope of, and in pursuance of, said joint venture, partnership and common enterprise.

6 14. At all times herein mentioned, the acts and omissions of various Defendants, and
7 each of them, concurred and contributed to the various acts and omissions of each and all of the
8 other Defendants in proximately causing the injuries and damages herein alleged.

9 15. At all times herein mentioned, Defendants, and each of them, ratified each and every
10 act or omission complained of herein. At all times herein mentioned, Defendants, and each of them,
11 aided, abetted, and consented to the acts and omissions of each and all of the other Defendants in
12 proximately causing the injuries and damages herein alleged.

13 ADDITIONAL FACTS

14 16. During the class period, Defendants regularly employed salaried workers to do
15 accounting work but these workers were not licensed or certified by the State of California in the
16 practice of accounting; in other words, Defendants' Uncertified Employees were not Certified
17 Public Accountants.

18 17. Defendants uniformly classified all Uncertified Employees as exempt from overtime
19 under the California Labor Code and the Industrial Welfare Commission's Wage Orders.

20 18. During their employment by Defendants, Plaintiffs worked more than eight hours in
21 a day and/or 40 hours in a week but in keeping with uniform company policy with respect to all
22 salaried Uncertified Employees, Defendants did not pay Plaintiffs overtime compensation for those
23 hours. In addition, Plaintiffs were frequently unable to take proper meal breaks as required by
24 California law.

25 19. Although classified as exempt, Plaintiffs and the class members should have been
26 paid overtime for all qualifying hours but Defendants uniformly failed to pay such overtime.

CLASS ALLEGATIONS

20. This action may properly be maintained as a class action pursuant to section 382 of the California Code of Civil Procedure. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized under California law. This Class is comprised of, and defined as:

All persons employed by Defendants in the State of California as salaried exempt employees doing accounting work at any time within four years of filing this complaint to the present but who were not licensed or certified by the State of California in the practice of accounting and were not paid overtime for hours worked in excess of 8 hours in a day or 40 hours in a week (at times referred to as the "Class").

21. The proposed Class is ascertainable in that its members can be identified using information contained in Defendants' payroll and personnel records.

22. The members of the Class are sufficiently numerous such that joinder of all members would be impracticable. Further, the disposition of the claims of the Class in a class action will provide substantial benefits to both the parties and the Court.

23. The California Labor Code and Wage Order provisions upon which Plaintiffs base their claims are broadly remedial in nature. These laws and labor standards serve an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions on employment.

24. The nature of this action and the format of laws available to Plaintiffs and the Class make the class action format a particularly efficient and appropriate procedure to redress the wrongs alleged herein. Further, this case involves large corporate Defendants and a large number of individual employees with many relatively small claims. If each employee were required to file an individual lawsuit, the corporate Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior legal and financial resources.

1 25. Requiring each member of the Class to pursue an individual remedy would also
2 discourage the assertion of lawful claims by employees who would be disinclined to file an action
3 against their former and/or current employer.

4 26. Moreover, the prosecution of separate actions by the individual Class members
5 would create a substantial risk of inconsistent or varying adjudications with respect to individual
6 Class members against Defendants.

7 27. There is a well-defined community of interest in the questions of law and fact
8 involved affecting the parties to be represented. The questions of law and fact common to the Class
9 predominate over questions which may affect individual plaintiff Class members. These questions
10 of law and fact include, but are not limited to, the following:

11 (a) Whether each Class member was licensed or certified by the State of
12 California in the practice of accounting;

13 (b) Whether Defendants classified each Class member as exempt;

14 (c) Whether Defendants were required by law to pay the Class overtime for all
15 hours worked in excess of eight hours a day and forty hours per week;

16 (d) Whether Defendants implemented and engaged in a systematic practice
17 whereby they improperly failed to pay for all overtime hours worked by the Class;

18 (e) Whether Defendants denied members of the Class wages in order to increase
19 profits and lower costs;

20 (f) Whether Defendants failed to keep, maintain and/or furnish accurate records
21 of the actual hours worked by the Class;

22 (g) Whether the Class received appropriate meal breaks in compliance with
23 California law;

24 (h) Whether Plaintiffs and Class members no longer working for Defendants are
25 entitled to "waiting time" penalties;

26 (i) Whether Defendants' conduct constituted an illegal, unfair, or deceptive
27 business practice;
28

1 (j) Whether Defendants' systematic acts and practices violated, *inter alia*,
2 California Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1174, and 1194, the applicable
3 Wage Orders of the Industrial Welfare Commission, and Business & Professions Code sections
4 17200 *et seq.*;

5 (k) Whether Plaintiffs and the Class are entitled to compensatory damages under
6 the Labor Code; and

7 (l) Whether Class members are entitled to injunctive relief.

8 28. Proof of a common business practice or factual pattern which Plaintiffs experienced
9 is representative of that experienced by the Class and will establish the right of each of the Class
10 members to recover on the causes of action alleged.

11 29. Such a pattern, practice and uniform administration of illegal corporate policies with
12 respect to employee compensation, as described herein, creates an entitlement in common for
13 Plaintiffs and the Class to recover in a civil action for the unpaid balance of the full amount of the
14 overtime compensation owing, including interest thereon, waiting time penalties, reasonable
15 attorney's fees and costs of suit according to the mandate of California Labor Code section 1194, *et*
16 *seq.*

17 30. Furthermore, Plaintiffs and the Class are entitled in common to restitution and
18 disgorgement of funds withheld improperly by Defendants. Accordingly, Plaintiffs, on behalf of the
19 Class, will seek the creation of a common fund made up of the aforementioned damages.

20 31. Plaintiffs assert claims that are typical of the claims of the Class because they were
21 employed by Defendants as salaried exempt employees to do accounting work but were not licensed
22 or certified by the State of California in the practice of accounting and were not paid overtime for
23 hours worked in excess of 8 hours in a day or 40 hours in a week and were therefore subjected to the
24 same uniform policies and procedures as the Class and similarly injured due to Defendants' actions.

25 32. Plaintiffs will fairly and adequately represent and protect the interests of the Class in
26 that they have no disabling conflicts of interest that would be antagonistic to other members of the
27 Class. Moreover, Plaintiffs seek relief that is not antagonistic or adverse to the members of the
28 Class in that the infringement of Plaintiffs' rights and the damages Plaintiffs have suffered are

1 typical of all other members of the Class. Additionally, Plaintiffs have retained counsel that is
2 competent and experienced in class action litigation.

3 33. Plaintiffs and the Class have all similarly suffered irreparable harm and damages as a
4 result of Defendants' unlawful and wrongful conduct. This action will provide substantial benefits
5 to both the Class and the public since, absent this action, Defendants' unlawful conduct will
6 continue unremedied and uncorrected.

7 34. Defendants have acted or refused to act in respects generally applicable to the Class,
8 thereby making appropriate final and injunctive relief or corresponding declaratory relief with
9 regard to members of the Class as a whole, as requested herein. Likewise, Defendants' conduct as
10 described above and below is unlawful, continuing and capable of repetition and will continue
11 unless restrained and enjoined by the Court.

12 **FIRST CAUSE OF ACTION**

13 **(Failure to Pay Overtime Wages in Violation of the California Labor Code and Applicable** 14 **Wage Orders of the California Industrial Welfare Commission Against All Defendants and** 15 **Does 1-100)**

16 35. The preceding paragraphs of this Complaint are realleged and incorporated by
17 reference.

18 36. Pursuant to California Labor Code section 1194, Plaintiffs may bring a civil action
19 for overtime wages directly against the employer without first filing a claim with the Division of
20 Labor Standards Enforcement. Further, such private actions have the support and approval of the
21 Division of Labor Standards Enforcement.

22 37. During all relevant time periods, California Labor Code section 510 applied to the
23 Plaintiffs and the Class and provided that any work performed by a non-exempt employee in excess
24 of eight hours in a day or in excess of 40 hours in a week, must be compensated at one and one-half
25 times the employee's regular rate of pay. Defendants and each of them, did not compensate
26 Plaintiffs or the Class for all hours worked in excess of eight hours in a day or in excess of 40 hours
27 in a week at one and one-half times their regular rate of pay.
28

38. During their employment by Defendants, Plaintiffs and members of the Class were required to work more than eight hours a day and/or forty hours per week without receiving overtime pay.

39. However, Plaintiffs and the Class were not exempt and should have received overtime wages in a sum according to proof for the hours they worked pursuant to the provisions of California's Labor Code and the applicable Wage Orders issued by the Industrial Welfare Commission of California.

40. Plaintiffs are informed and believe and thereon allege that Defendants and each of them, knew or should have known that Plaintiffs and members of the Class should have been paid a premium for all overtime hours they worked and purposely and unfairly elected not to pay them for their overtime labor.

41. Such a pattern, practice and uniform administration of corporate policy regarding illegal employee compensation, as described herein, is unlawful and Plaintiffs and the Class are entitled to recover in a civil action for the unpaid balance of the full amount of the overtime premiums owing, including interest thereon, as well as penalties, reasonable attorney's fees and costs of suit pursuant to the California Labor Code. Therefore, Plaintiffs and the Class request such a recovery.

42. Plaintiffs and the Class also seek injunctive relief to ensure that Class members are properly classified.

43. Plaintiffs and the Class also request relief as described below.

SECOND CAUSE OF ACTION

(Failure to Properly Compensate for Missed Meal Breaks in Violation of the California Labor Code Against All Defendants and Does 1-100)

44. The preceding paragraphs of this Complaint are realleged and incorporated by reference.

45. Labor Code sections 226.7 and 512 require that every employer authorize and permit employees to take an uninterrupted meal period of not less than 30 minutes for a work period of more than five hours. If an employer fails to provide the meal periods, the employer is required to

1 pay the employee one additional hour of compensation for each workday that a meal period is not
2 provided.

3 46. Defendants and each of them, failed to provide Plaintiffs and the Class the meal
4 periods required under California law.

5 47. Defendants' failures proximately caused Plaintiffs and the Class to be deprived of
6 wages and therefore entitles Plaintiffs and the Class to one hour of additional pay for each improper
7 meal break.

8 48. Plaintiffs and the Class also request relief as described below.

9 **THIRD CAUSE OF ACTION**

10 **(Failure to Furnish Accurate Itemized Wage Statements in Violation of the California Labor** 11 **Code Against All Defendants and Does 1-100)**

12 49. The preceding paragraphs of this Complaint are realleged and incorporated by
13 reference.

14 50. California Labor Codes sections 226 subsection (a) and 1174 require employers to
15 maintain and furnish each employee with an itemized statement showing the total hours worked by
16 the employee on a semi-monthly basis or with each paycheck.

17 51. California Labor Code section 226(e) provides that if an employer knowingly and
18 intentionally failed to comply with this section then the employee is entitled to recover the greater of
19 actual damages or \$50 dollars for the initial violation and \$100 dollars for each subsequent
20 violation, up to \$4,000, plus costs and reasonable attorney's fees.

21 52. Defendants knowingly and intentionally failed to furnish and maintain for Plaintiffs
22 and the Class the records required under California law. As a result, Plaintiffs and the Class are
23 entitled to the amounts provided in Labor Code section 226(e).

24 53. Plaintiffs and the Class also request relief as described below.
25
26
27
28

FOURTH CAUSE OF ACTION**(Failure to Timely Compensate for All Wages Due at End of Employment in Violation of the California Labor Code Against All Defendants and Does 1-100)**

54. The preceding paragraphs of this Complaint are realleged and incorporated by reference.

55. Labor Code section 201 required Defendants and each of them, to pay their employees that were discharged all wages due immediately upon discharge. Labor Code section 202 required Defendants and each of them, to pay their employees that resigned all wages due within 72 hours of the resignation. Defendants and each of them, in violation of these sections, willfully failed to pay Plaintiffs and the Class all wages due and owing within the timeframes required by these statutes.

56. Plaintiffs and all other Class members did not secrete or absent themselves from Defendants nor refuse to accept the earned and unpaid wages from Defendants. Defendants' illegal actions proximately caused damages to Plaintiffs and the Class.

57. Accordingly, Defendants and each of them, are liable for waiting time penalties to Plaintiffs and the Class pursuant to Labor Code section 203 in an amount according to proof.

58. Plaintiffs and the Class also request relief as described below

FIFTH CAUSE OF ACTION**(Violation of Business & Professions Code Sections 17200, *et seq.*, Unfair Business Practices Against All Defendants and Does 1-100)**

59. The preceding paragraphs of this Complaint are realleged and incorporated by reference.

60. Business and Professions Code § 17200 *et seq.*, prohibits acts of unfair competition which shall mean and include any "unlawful, unfair, or fraudulent business act or practice." Plaintiffs and the Class allege that at all relevant times Defendants and each of them, have engaged in unfair business practices in California by utilizing the illegal employment practices outlined above, including causing Plaintiffs and the Class to perform services without receiving proper

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Santa Monica, CA 90405

1 compensation as required by the California Labor Code and the applicable Wage Orders of the
2 Industrial Welfare Commission.

3 61. Defendants' practices are illegal and violate Labor Code sections 201, 202, 203, 226,
4 226.7, 510, 512, 1174, and 1194, and the applicable Wage Orders of the Industrial Welfare
5 Commission. Furthermore, Defendants' policies and procedures constitute unfair business
6 practices, unfair competition, and provide an unfair advantage over Defendants' competitors.

7 62. Defendants' actions entitle Plaintiffs and the Class to seek the remedies available
8 pursuant to section 17200.

9 63. Additionally, under California law, wages unlawfully withheld from an employee
10 constitute an unfair business act as defined by section 17200 entitling Plaintiffs and the Class to a
11 restitution remedy authorized by section 17203.

12 64. Plaintiffs and the Class seek full restitution and disgorgement of said monies from
13 Defendants, as necessary and according to proof, to restore any and all monies, including interest,
14 withheld, acquired or converted by Defendants by means of the unfair practices complained of
15 herein. Plaintiffs and the Class further seek the appointment of a receiver as necessary. Plaintiffs
16 and the Class also seek an injunction and declaratory relief to remedy and prevent Defendants'
17 improper practices.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiffs pray for judgment and relief as follows:

20 1. An Order certifying that the action may be maintained as a class action under
21 California Civil Code section 382;

22 2. For an injunction against Defendants' continued application of policies that violate
23 California law;

24 3. Compensatory and statutory damages including interest thereon, and restitution, as
25 appropriate and available under each cause of action, in an amount to be proven at trial;

26 3. For pre-judgment and post-judgment interest as allowed by California Labor Code
27 sections 218.6 and 1194(a) and California Civil Code section 3287;
28

1 4. For reasonable attorney's fees, expenses and costs as provided by California Labor
2 Code section 1194;

3 5. For penalties as appropriate and available under each cause of action, pursuant to the
4 applicable Labor Code sections;

5 6. For restitution to Plaintiffs and the Class (and disgorgement from Defendants) of all
6 funds unlawfully acquired by Defendants by means of any acts or practices declared by this Court to
7 violate California Business & Professions Code section 17200 *et seq.*;

8 7. For exemplary and punitive damages as appropriate and available under each cause of
9 action, pursuant to California Civil Code section 3294; and

10 8. Such other and further relief as the Court deems proper.

11
12 DATE: January 9, 2008

MILSTEIN, ADELMAN & KREGER, LLP

13
14 
15 By: WILLIAM A. BAIRD

16 Attorney for Plaintiffs, MICHELLE GARCIA and
17 GINA JOHNSON, on Behalf of Themselves, All
18 Others Similarly Situated, and On Behalf of the
19 General Public.
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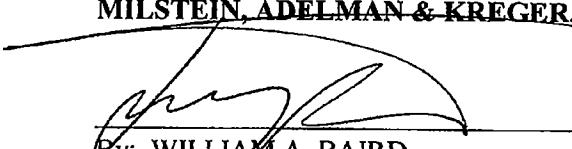
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2800 Donald Douglas Loop North
Santa Monica, CA 90405

DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury of all claims and causes of action existing in this lawsuit.

DATE: January 9, 2008

MILSTEIN, ADELMAN & KREGER, LLP


By: WILLIAM A. BAIRD

Attorneys for Plaintiffs, MICHELLE GARCIA and
GINA JOHNSON, on Behalf of Themselves, All
Others Similarly Situated, and On Behalf of the
General Public.

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2800 Donald Douglas Loop North
Santa Monica, CA 90405

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF ALAMEDA

I am employed in the County of LOS ANGELES, State of CALIFORNIA. I am over the age of 18 and not a party to within action; my business address is **2800 Donald Douglas Loop North, Santa Monica, California 90405.**

On January 10, 2008, I served the foregoing document described as:

SUMMONS AND FIRST AMENDED CLASS ACTION COMPLAINT

on interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Jesse Cripps Jr., Esq.
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197

T: (213) 229-7792

F: (213) 229-6792

xxxx (BY OVERNIGHT EXPRESS) I caused such envelope with postage thereon fully prepaid to be placed in the Overnight Express box at Santa Monica, California.

Executed on January 10, 2008 at **Santa Monica, California.**

----- (BY EMAIL) I caused such documents to be successfully transmitted via email to the offices of the addresses.

----- (BY PERSONAL SERVICE) I caused such envelope to be hand delivered to the offices of the addressees.

xxxx (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

----- (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


Sinny Thai